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**Comptroller General  
of the United States**

Washington, D.C. 20548

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## Decision

**Matter of:** Tri-Ark Industries, Inc.

**File:** B-266239; B-270192

**Date:** January 17, 1996

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Ruth E. Ganister, Esq., Rosenthal and Ganister, for the protester.  
Richard E. Hurst, Esq., General Services Administration, for the agency.  
John Van Schaik, Esq., and Michael R. Golden, Esq., Office of the General Counsel,  
GAO, participated in the preparation of the decision.

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### **DIGEST**

1. Protest that solicitation is ambiguous because it did not spell out the frequency with which various cleaning tasks are to be performed under custodial services contract is denied because specifications sufficiently informed bidders of the minimum requirements of contract performance to enable them to bid intelligently and on a common basis.
2. Protest that bid is unbalanced and should be rejected is denied where bid is not materially unbalanced. Since low bid includes the same price for each year of the contract, including the base year and all 4 option years, the bid will not fail to result in the actual low cost to the government because some options are not exercised; rather, the bid is the low bid in the base year and will be the low bid if any number of options is exercised.

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### **DECISION**

Tri-Ark Industries, Inc. protests the terms of invitation for bids (IFB) No. GS11P95MJC0043, issued by the General Services Administration (GSA) for custodial services for the Interstate Commerce Commission Building, U.S. Customs Building and the Connecting Wing including the Departmental Auditorium. Tri-Ark argues that the IFB is ambiguous and should be revised and clarified. Tri-Ark also argues that the low bid submitted under the solicitation by Spotless Janitorial Services, Inc. is unbalanced and should have been rejected.

We deny the protests.

The awardee under the IFB is to provide management, supervision, labor, materials, supplies, and equipment and is to plan, schedule, coordinate and assure effective performance of janitorial services for the specified buildings for a 1-year base period with 4 possible option years. The IFB required bidders to include annual prices for the base year and each option year for the following line items:

1. Required services--performed more frequently than quarterly, semi-annually and annually (i.e. daily, weekly, monthly, etc.).
2. Bimonthly services--performed every 2 months.
  - ( a) Entrance and elevator rugs.
3. Semiannual services--performed twice a year.
  - (a) Windows, transoms, and glass.
  - (b) Main entrances, lobbies, and corridors.
4. Annual services--performed once a year.
  - (a) Carpet shampooing.

The IFB stated that the agency would evaluate bids for award purposes by adding the price for the base period to the total prices for the option periods, unless it were determined not to be in the government's interest to do so.

GSA received 28 bids, including one from the protester. Spotless submitted the low, responsive bid of \$3,599,940; Tri-Ark's bid was second low. In response to a request from the contracting officer concerning the possibility of a mistake in its bid, Spotless asserted that it had made no mistake and verified its prices for line items 3 and 4. The agency intends to award the contract to Spotless.

Tri-Ark, the incumbent contractor, complained before bid opening that the IFB was defective because, with limited exceptions, it did not spell out required frequencies for the custodial services to be performed under the contract. Tri-Ark notes that the IFB includes provisions that give the government the right to perform inspections to determine whether services provided "conform to contract requirements" and to deduct from payments to the contractor for nonconforming services. Tri-Ark maintains that inspections on janitorial services contracts are highly subjective and that, if the IFB does not set forth specific frequencies for the tasks to be performed, a contractor cannot know whether its performance will meet the subjective expectations of a particular inspector. As a consequence, according to Tri-Ark, without statements of the required frequencies of services, it will be possible for a contractor to perform daily cleaning and still be subject to penalty for soil attributable to normal usage after the cleaning is done.

Tri-Ark notes that the incumbent contract, which includes similar inspection and deduction provisions, also includes detailed requirements for the frequency of required cleaning tasks. Thus, according to Tri-Ark, during performance of the

incumbent contract, there has been no chance for conflict concerning the performance standard required by IFB terms such as "sanitize," "disinfected" and "clean," since the standard of performance required under that contract is clearly defined by the frequency requirements. Tri-Ark requests that the frequency requirements used under the incumbent contract, or similar requirements, be included in the current solicitation.

The contracting officer has the primary responsibility for determining an agency's minimum needs and for drafting specifications to reflect those needs, and we will not question an agency's specifications unless there is a clear showing that they have no reasonable basis. Sunnybrook, Inc., B-225642, Apr. 10, 1987, 87-1 CPD ¶ 399. Specifications, however, must be sufficiently definite and free from ambiguity to inform bidders of the minimum requirements of contract performance so they may bid intelligently and on a common basis. Crimson Enters., Inc., B-209918.2, June 27, 1983, 83-2 CPD ¶ 24.

Here, the IFB included a detailed explanation of the size, dimensions, and layout of each of the buildings, including but not limited to, gross area, occupied area, net building cleaning area, parking lot area, and exterior area for snow removal and policing; numbers of restroom fixtures, utility sinks, windows, venetian blinds, elevators, stairways, square footage of carpet and hard floors; and dimensions of special purpose rooms such as laboratories, physical fitness rooms, storage areas, and mail rooms. The IFB also provided for a site visit to the buildings so that prospective bidders could verify the space requirements, dimensions, and other information.

The IFB included 32 paragraphs detailing the "Cleaning standards" with which the contractor is to comply. Under most of the paragraphs, without stating a frequency for specific cleaning tasks, the IFB simply stated cleaning standards, such as "[a]ll floor surfaces shall be maintained clean and free of trash, debris, and foreign matter," or stairwells and landings "shall be free of dust, dirt, spillages, and other removable soil substances." In other examples, under the heading "Restrooms, locker rooms, shower stalls, water fountains, and utility sinks," the IFB stated "plumbing fixtures shall be clean, disinfected, and bright with no obvious dust, stains, streaks, soil substances, rust mold, or encrustation," while under the heading "Loading docks and platforms," the IFB stated "[d]esignated areas shall be maintained to ensure that they are free of trash, debris, and other discarded materials. Floor surfaces shall be sealed to prevent oil, grease, or tar from permeating the concrete."

As Tri-Ark notes, under the "Cleaning standards" paragraphs, the IFB included few statements of the frequency of specific required tasks; nonetheless, elsewhere the IFB required certain nonroutine tasks to be done at specific frequencies. For example, elevator and entrance carpets are to be cleaned and shampooed every 2

months; windows are to be washed twice a year; floors, including the main entrance, lobby, corridor floors, resilient and hard floors, are to be stripped and sealed or finished twice a year; and carpets throughout the buildings are to be shampooed annually. Thus, there is no reason for disputes under the contract concerning the frequency of these nonroutine tasks.

As to the routine tasks, as the agency reports, under the IFB, before the start of performance, the awardee is to submit to the agency an annual schedule of all routine and periodic cleaning.<sup>1</sup> Since routine cleaning is defined as cleaning performed monthly or more frequently, the schedule prepared by the contractor will encompass the required services under line item 1, including the cleaning tasks which Tri-Ark maintains may be subject to ambiguous interpretation by agency inspectors. Although Tri-Ark continues to argue that there is a "potential for havoc in the course of performance," the protester also argues, however, that the post-award schedule will not cure the problems in the IFB but will only bring those problems to a head before performance begins.

Tri-Ark cannot have it both ways; if a cleaning schedule is submitted and agreed to before performance starts, during performance that schedule will dictate the frequency of various cleaning tasks and, as under Tri-Ark's incumbent contract, there will be no reason for disputes between the contractor and government inspectors concerning cleaning frequencies. In other words, once the cleaning schedule is agreed to, contrary to the protester's contention, there will be no more reason for disputes over cleaning frequencies during performance of the contract than there has been under Tri-Ark's incumbent contract.

Moreover, although there is some potential for a dispute between the awardee and the government over the schedule prior to performance, every cleaning services contract has some potential for dispute and there is no requirement that specifications be so detailed as to eliminate all uncertainties and risks.<sup>2</sup>

Sunnybrook, Inc., supra. In any event, the awardee will be protected from an arbitrary determination concerning its performance by the standard disputes clause incorporated in the solicitation. Newport News Shipbuilding and Dry Dock Co., B-221888, July 2, 1986, 86-2 CPD ¶ 23.

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<sup>1</sup>Such a schedule is also to be submitted under each option that is exercised.

<sup>2</sup>For instance, although Tri-Ark maintains that the cleaning standards are clearly defined under the incumbent contract, that contract specifies sweeping of loading docks and platforms only once a day, yet it also requires that such areas "be free of trash, debris and other discarded material," raising the possibility of a negative inspection if trash is dumped on a loading dock after the daily sweeping.

Although Tri-Ark believes that the IFB should spell out specific frequencies for more of the various cleaning tasks, we do not believe such specificity is necessary for bidders to bid intelligently and to permit competition on a common basis. Crimson Enters., Inc., *supra*. Moreover, since none of the other 27 firms that submitted bids under the IFB questioned the specifications, Tri-Ark's competitors apparently were satisfied with the information supplied in the IFB. *Id.* While the agency could have inserted in the IFB the frequency requirements from the incumbent contract, the agency explains that it left cleaning frequencies out of the solicitation so that bidders would be free to determine for themselves the equipment, the supplies and the staffing strategies necessary to meet the agency's cleaning standards. That judgment is within the contracting agency's discretion. Sunnybrook, Inc., *supra*.

Tri-Ark also argues that Spotless' bid is unbalanced because it includes enhanced prices for the required services set forth in line item 1 and below-cost prices for the semiannual and annual services required under line items 3 and 4. Tri-Ark maintains that Spotless' price for line item 1 is overstated because it is higher than Tri-Ark's price for that item. In addition, according to Tri-Ark, if the Spotless bid does not include overstated prices, then Spotless submitted a below-cost bid which the contracting officer should have rejected.

To be rejected as unbalanced, an offer must be both mathematically and materially unbalanced. Solid Waste Servs., Inc., B-248200.4, Nov. 9, 1992, 92-2 CPD ¶ 327. A bid is mathematically unbalanced when it contains understated prices for some items and overstated prices for other items. Hampton Rds. Leasing, Inc., B-250645.2, Feb. 1, 1993, 93-1 CPD ¶ 486. A bid is materially unbalanced if, due to its mathematical unbalance, there is a reasonable doubt that the bid will result in the lowest overall cost to the government. *Id.*

Even if the Spotless bid is mathematically unbalanced between the required services and the semiannual/annual services, we cannot conclude that the bid is materially unbalanced, *i.e.*, that there is a reasonable doubt that the bid will result in the lowest overall cost to the government. In this respect, Spotless bid the same amount for each year of the contract, including the base year and all 4 options. Thus, this is not a case in which the apparent low bid will result in the actual low

cost to the government only after the exercise of some or all of the option years. Rather, the Spotless bid is the low bid in the base year and will be the low bid regardless of the number of options exercised.<sup>3</sup>

The protest is denied.

Comptroller General  
of the United States

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<sup>3</sup>Tri-Ark also argues that the agency should have required more of an explanation from Spotless before accepting the firm's assertion that there was no mistake in its bid. This is essentially an allegation that a lower-priced bid was mistaken and should not have been accepted; since it is solely the responsibility of the contracting parties to assert rights and bring forth the necessary evidence to resolve mistake questions, we will not consider this allegation. W.M. Schlosser Co., Inc., B-254968, Oct. 1, 1993, 93-2 CPD ¶ 201. Finally, to the extent that Tri-Ark argues that the Spotless bid should have been rejected because it is below cost, the submission of a below-cost bid is not improper and the government cannot withhold award simply because an otherwise responsive bid is below cost. Id.